

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ANDRE HARRISON, A098069616,

Petitioner,

-v-

MARTIN D. HERRON, Director of Buffalo  
Federal Detention Center, et al., MICHAEL  
T. PHILLIPS, ICE, Field Office Director,  
ERIC H. HOLDER, Attorney General of the  
United States,

Respondents.

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**DECISION AND ORDER**

10-CV-00829(S)(M)

Petitioner Andre Harrison, who is presently being detained at the Buffalo Federal Detention Facility pending removal, has filed a petition for habeas corpus pursuant to 28 U.S.C. § 1447. Petition [1].<sup>1</sup> Petitioner has filed two identical motions for a stay of removal pending resolution of his petition for habeas corpus relief [5, 6]. For the following reasons, petitioner's motions to stay his removal are denied, without prejudice.

**ANALYSIS**

This court lacks jurisdiction to consider petitioner's motions to stay his removal. "[E]ven if Petitioner were challenging an order of removal, the district court would not have jurisdiction to enter a stay of deportation. The so-called 'Real ID Act of 2005' . . . under which the circuit courts were vested with exclusive authority to review orders of removal . . . has been

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<sup>1</sup> Bracketed references are to the CM/ECF docket.

construed to mean that only the circuit court may issue such a stay.” Thomas v. Spitzer, 2008 WL 4360550, \*2 (S.D.N.Y. 2008). *See* Al-Garidi v. Holder, 2009 WL 1439216, \*1 (W.D.N.Y. 2009)(Larimer, J.) (“This Court and other district courts throughout the country have routinely held that because district courts have no jurisdiction to review final orders of removal, they have no jurisdiction to review requests for stays of removal”). Therefore, petitioner’s motions to stay his removal must be denied.

### **CONCLUSION**

For these reasons, petitioner’s motions to stay his removal [5, 6] are denied, without prejudice to re-filing with the appropriate Circuit Court of the United States Court of Appeals.

**SO ORDERED.**

Dated: December 3, 2010

/s/ Jeremiah J. McCarthy  
JEREMIAH J. MCCARTHY  
United States Magistrate Judge